

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION, CINCINNATI
4
5 EVERETT W. WHISMAN, et al.: Case No. C-1-02-406
6 Plaintiffs, : Judge Beckwith
7 V. : Magistrate Sherman
8 ZF BATAVIA, LLC, et al., :
9 Defendants. :

10 Deposition of WILLIAM DEVITO, taken on
11 Monday, August 11, 2003, commencing at 2:36 p.m.,
12 at the offices of Baker & Hostetler LLP, 312 Walnut
13 Street, Suite 3200, Cincinnati, Ohio, before
14 Susan M. Barhorst, Notary Public.

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8 Also present:

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14 Cross-Examination

15	by Mr. Hunter	4, 91
16		
17	by Mr. VanWay	54, 96

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1	DEVITO DEPOSITION EXHIBITS	MARKED/IDENTIFIED
2	2	16
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1 WILLIAM DEVITO

2 being first duly sworn, testified as follows:

3 CROSS-EXAMINATION

4 BY MR. HUNTER:

5 Q. Sir, will you please state your name
6 for the record?

7 A. William DeVito.

8 Q. And, sir, your current address?

9 A. 1187 Yearwood Lane, Batavia, Ohio
10 45103.

11 Q. And Mr. DeVito, have you ever had your
12 deposition taken before?

13 A. No.

14 Q. You just had an opportunity this
15 afternoon to sit through a -- at least a portion of
16 Mr. Pearce's deposition. And basically it's an
17 opportunity for me to ask questions and try and
18 understand better the litigation that's currently
19 being brought.

20 I would ask that at any time, if you
21 can't hear me, you don't understand the question or
22 for whatever reason, you don't feel that you can
23 fairly answer my question, then stop me and let me
24 know that you didn't hear the question, understand

1 it or whatever the problem might be. Is that fair?

2 A. Yes.

3 Q. Okay. Is there anything today that
4 would prevent you from being able to go forward
5 with your deposition, in terms of a personal issue,
6 a health issue or anything like that?

7 A. Not that I can think of.

8 Q. Okay. If I use the term "Ford
9 transitional," do you know what I mean by that?

10 A. Yes.

11 Q. Okay. Basically a individual that
12 hired on with ZF Batavia at the time of the joint
13 venture and is now a ZFB -- ZB Batavia employee,
14 okay?

15 A. That's the way I understand it, yes.

16 Q. All right. Do you recall, when did
17 you start with Ford?

18 A. 11/11/67.

19 Q. So did you have 30 years vested
20 service in the general retirement plan at the time
21 you transferred to Batavia?

22 A. Yes.

23 Q. Did you retire or have you retired yet
24 from Ford Motor Company?

1 A. Yes, I have.

2 Q. And what was the effective date of
3 your retirement?

4 A. 11/30/99.

5 Q. So if I see a start date of -- what
6 was your state date at Batavia?

7 A. 12/1/99.

8 Q. Okay. Immediately after your --

9 A. Yes.

10 Q. -- retirement from Ford? Okay.
11 During your tenure at Ford, what various job
12 positions did you have?

13 A. Production supervisor. At one time,
14 there used to be various titles that went with
15 that, but they were all production supervisor, the
16 utility supervisor. That's it, I guess.

17 Q. Okay. And prior to coming on with
18 Batavia, ZF Batavia, what was your position?

19 A. I forget the exact title. I guess the
20 last title was group leader.

21 Q. Okay. The hire letter that I'm aware
22 of for you, and I'll show you that in just a minute
23 here, indicates that you were hired on as a
24 manufacturing production specialist. Would that

1 have been a promotion to come over to the joint
2 venture?

3 A. Yes.

4 Q. Okay. All right. Let's talk a little
5 bit about the move over to Batavia. Did you attend
6 any of the meetings that were held regarding the
7 opportunities at Batavia?

8 A. Yes, I did.

9 Q. Do you remember what meetings you
10 attended?

11 A. I don't know the exact dates. There
12 was one in either late April or early May and
13 another one in June.

14 Q. All right. Well, let's talk about the
15 first one in late April or early May. Where was
16 that meeting held?

17 A. It was in the cafeteria.

18 Q. Do you remember who spoke at that
19 meeting?

20 A. I don't remember everybody. Mike --
21 Mike Warden. I think Dave Adams spoke a little bit
22 at that one and Karl Kehr. There were others, but
23 I -- there was some Ford people that I've not --
24 that I never met before, so --

1 Q. Was -- to your knowledge, was Karl
2 Kehr a Ford person or a Batavia person at that
3 time?

4 A. He was introduced as the chief
5 financial officer, so I would assume that he was
6 already on board with them --

7 Q. Okay.

8 A. -- but I don't know that to be a fact.

9 Q. Do you remember any of the
10 discussions, comments, statements from any of these
11 folks you've identified at this first meeting in
12 April, May?

13 A. Not really.

14 Q. Were you given any handouts or other
15 documentation?

16 A. Not in that -- not in that first
17 meeting.

18 Q. Okay.

19 A. There was -- they were -- the general
20 theme was to let everybody know what was going on
21 with the -- the joint venture and the opportunity
22 was there for the Ford people --

23 Q. Okay.

24 A. -- and to reassure them that if they

1 chose to not go with the company. That was the
2 things that I remembered from it.

3 Q. What was your understanding as to what
4 would happen if they didn't go with the company, at
5 least as of this first meeting?

6 A. As of this first meeting, they painted
7 a pretty rosy picture that there'd be opportunities
8 for -- for everybody, either to stay with the joint
9 venture or return to a Ford facility.

10 Q. All right. And then there was a
11 subsequent meeting, I think you said in perhaps
12 June?

13 A. Yes. Yeah, there was a meeting in
14 May, but I was on vacation when that one
15 transpired.

16 Q. All right. Who was at the meeting in
17 early June?

18 A. The same -- it was the same folks that
19 I mentioned. There was a couple different HR
20 people from -- from Ford and there was a
21 representative from Fidelity Investments.

22 Q. Where was this meeting at?

23 A. It was also in the cafeteria.

24 Q. And you're sure this wasn't the May

1 27th meeting?

2 A. Yeah. I was on vacation that whole
3 week, so --

4 Q. Okay.

5 A. -- I don't know if it was a make-up
6 meeting for -- because there wasn't like the
7 general population -- salary population wasn't
8 there. There was -- I don't know. I wouldn't even
9 venture to guess how many.

10 Q. Because there were a lot or because
11 there were a few or because you don't remember?

12 A. Well, I don't really remember, but,
13 no, there wasn't as many as the first meeting.

14 Q. Okay. Do you remember what was said
15 at this second meeting?

16 A. That was the one that they told
17 everybody that they would be -- Glenn Marinetti, in
18 my specific case, would be contacting me. It was
19 the -- all the production personnel and the
20 maintenance personnel, he would contact because he
21 was their manager to either make them an offer or
22 to explain it -- give them a brief explanation of
23 why they weren't receiving one.

24 Q. Do you remember anything else from

1 that meeting?

2 A. There was comments that were made
3 about -- that they were going to mirror the Ford
4 benefits.

5 Q. Okay. Do you remember anything else?

6 A. They went into some detail about some
7 of the things, but they -- they covered so much, I
8 don't really remember. They did talk about -- I
9 don't remember whether they called it a pamphlet, a
10 flier or what, that would further describe the
11 benefits that would be made available to you at the
12 time of the offer.

13 Q. Did they provide that prior, at the
14 time of this meeting?

15 A. No. They just -- there was a lot of
16 questions around getting more specific and they
17 still -- had commented that it was -- hadn't been
18 finalized and was still in the works.

19 Q. Were you given any documents at this
20 meeting?

21 A. I think that the representative from
22 Fidelity had some pamphlets that he handed out, but
23 that's all that I recall. One other thing, I just
24 didn't remember, that was when they talked about

1 the lease program being suspended and the A Plan
2 being suspended. You could still purchase a car on
3 A Plan, I think, through the end of that calendar
4 year, but that's -- that's it.

5 Q. Now, you -- don't you get A Plan
6 because you're a Ford retiree?

7 A. I get Z Plan.

8 Q. Z Plan, okay. Which is better?

9 A. It's the same.

10 Q. Is it?

11 A. It's exactly the same, just a way of
12 identifying that retirees are buying it, I guess.

13 Q. Okay. So you've told me that they --
14 the comment was they would try and mirror the Ford
15 benefits, the tri-fold hasn't been completed at
16 that point. Anything else you remember that was
17 said to you at that meeting?

18 A. No, I don't.

19 Q. Do you remember any discussions about
20 your retirement plan?

21 A. I can't say that I do at this time.

22 Q. Okay. Did you attend any other
23 meetings relative to your potential move over to ZF
24 Batavia?

1 A. Well, I had meetings with Jerry
2 Priest, Rick Williams and a couple brief
3 conversations with Hassan.

4 Q. Do you remember when you had the
5 meeting -- meetings with Jerry Priest?

6 A. Oh, yeah. I also had a meeting with
7 Glenn Marinetti. His was the first one I had.

8 Q. Do you remember when that meeting was?

9 A. I want to say it was like the last
10 week in June, but I'm not sure which day because I
11 had to -- I had to notify them before the vacation
12 shutdown that year if I accepted or declined.

13 Q. What was the nature of the discussion
14 with Mr. Marinetti?

15 A. It was basically like a canned spiel
16 that he just presented to me because he was still a
17 Ford employee and it was like -- made the
18 information available and that's about it.

19 Q. When you say "a canned spiel," I -- I
20 would give that like a negative connotation, like
21 the company line or just -- you know, I don't know.
22 It seems that's a negative to me.

23 A. Well, he's -- I think it kind of was
24 for dealing with the man for 15 years. He was --

1 he had very few answers to any questions that were
2 asked. Unlike most everybody else that talked
3 about it, the other three names I gave you, they
4 had all joined the company by the time I talked to
5 them, ZF Batavia that is.

6 Glenn just went through the motions
7 and read the offer, stated that he didn't -- that
8 he had made some recommendations on who got offers
9 and who didn't, but that's about the only thing
10 that he volunteered.

11 Q. Okay. Did you talk to him about
12 anything else at the time of this meeting, in terms
13 of benefits, retirement, vacation, any of that?

14 A. We had some conversation about it, but
15 I don't remember. I think he -- I think his
16 comment was it was his understanding that the --
17 that the benefits would be identical.

18 Q. And when we talk about benefits,
19 that's like medical and dental, things like that?

20 A. Yeah, medical, dental, vacation,
21 personal time, medical leaves.

22 Q. Now, you made a comment that you
23 needed to get back to him before the July shutdown
24 with respect to the offer. I think that's what you

1 told me?

2 A. Yes.

3 Q. So obviously by that statement, you
4 were presented an offer prior to the shutdown
5 apparently?

6 A. Yes. It was a -- my same job, same
7 pay.

8 Q. Okay. And you declined that job
9 offer?

10 A. Yes, I did.

11 Q. How come?

12 A. Well, it -- exactly what I told him
13 was that I saw an opportunity there for something
14 that I -- I didn't see as a Ford Motor Company
15 facility and that was opportunities for promotion
16 that hadn't existed in -- at ZF -- or I mean at
17 Ford Batavia.

18 And if all they had to offer was the
19 same job and I wasn't specifically talking about a
20 promotion, just material control, maintenance,
21 labor relations or industrial relations, that I
22 would entertain that, otherwise I would just
23 decline and go with Ford.

24 Q. Did you have any further discussions

1 with him about -- well, about anything?

2 A. Not that I recall. I don't think I
3 even talked to him after that.

4 Q. Okay. Did you -- if you can pull out
5 Exhibit Number 2. Do you remember when you first
6 saw that document?

7 A. Yeah. It was given to me when they
8 made the presentation.

9 Q. Okay. Did you read that document at
10 that time?

11 A. Not right then. As I remember, he
12 handed it to me as I was getting ready to leave.
13 It wasn't attached or anything. It was folded up.

14 Q. A little tri-fold thing --

15 A. Yep, yep.

16 Q. -- that's about yea wide?

17 A. Yeah.

18 Q. Okay. At some point in time, did you
19 read that document?

20 A. Yes, I did.

21 Q. Okay. You were subsequently given
22 another offer or made another offer, I believe?

23 A. Yeah.

24 Q. By Mr. Priest, I believe?

1 A. Yeah, that was sometime in late
2 September, early October.

3 Q. If you thought the benefits and -- and
4 items like that were going to be the same at
5 Batavia as they were at Ford, why wouldn't you just
6 come on to Batavia?

7 A. Well, I never did quite figure out how
8 they considered that the retirement was going to be
9 the same, even though they kept saying that. And
10 part of that, as I continue to read it and -- and
11 discuss it with my wife and other people, that was
12 a -- one consideration.

13 The other was -- the first offer that
14 Jerry Priest made me was the exact same one that
15 Marinetti had. Then -- then they came back with --
16 with the promotional opportunity, but that was
17 strictly a verbal -- a verbal offer, I think.

18 I don't remember being -- having to
19 sign a sheet. And I had also had an interview at
20 Sharonville, which was not supposed to have any
21 openings, we were told. And made an offer over
22 there and I -- so they kind of put me under the gun
23 to make a decision.

24 Q. Well, in the interim --

1 MR. SIMON: Hold on a second.

2 A. And part of what I was -- part of
3 their sales pitch was seeing a million
4 transmissions a year annually because we weren't
5 able to make 400,000 a year, except the one year
6 that I was there. That was with maximum overtime
7 and minimal time out of the plant for everybody.
8 And all the great opportunities that were going to
9 be there with the CVT, that was the reason that I
10 decided --

11 Q. To join?

12 A. -- to join, yes.

13 Q. After your discussion with
14 Mr. Marinetti, there weren't any more -- I'll call
15 it group meetings with transitional employees and
16 the management, were there?

17 A. Not that I -- not that I'm aware of.

18 Q. Okay. And I think you told me you had
19 some discussions with some of your -- at least
20 former co-workers at that point, Mr. Priest and
21 Mr. Williams?

22 A. Yes, they were both -- at the time
23 that they discussed it with me, they -- they had
24 both just signed on with ZF.

1 Q. They signed on pretty early in 1990,
2 if memory serves me, probably second quarter?

3 A. For the two of them?

4 Q. Mm-hmm.

5 A. I'm not really sure --

6 Q. Okay.

7 A. -- because there -- there was rumors
8 floating around that they had their confirmation
9 that they signed to people was not till sometime
10 later.

11 Q. Let's talk about the discussions with
12 Mr. Williams, for example. What discussions did
13 you have with him?

14 A. He basically was reiterating what the
15 opportunities were as he saw them and his reasons
16 for joining the company. He had some of the same
17 that I did, that was seeing that many units being
18 produced at one location. I don't think any Ford
19 facility had produced a million transmissions in a
20 year at one location before, either. And the
21 opportunities that presented their self with the
22 new product starting up.

23 Q. What was your understanding of the
24 opportunities with respect to the new product?

1 A. Being in on the ground floor of buying
2 equipment, setting -- setting up the processes and
3 also promotional opportunities and assisting with
4 the hiring of the people that were coming on board
5 for ZF Batavia.

6 Q. Anything else?

7 A. No, not really.

8 Q. Ultimately you accepted a position as
9 an MPS with Batavia, correct?

10 A. Yes.

11 Q. You've been handed what we've marked
12 for identification purposes as Exhibit 99. Is that
13 the job offer that you accepted?

14 A. Yes.

15 Q. And I see that, again, that was as an
16 MPS. And it has a start date of December 1, 1999.
17 Do you see that?

18 A. Yes.

19 Q. And I believe that was, in part, to
20 assist with your retirement from Ford so that you
21 can have your Ford GRP retirement, as well as draw
22 salary at Batavia, correct?

23 A. Yes.

24 Q. To your understanding, is what's

1 occurring currently with your retirement in line
2 with what's in the gray brochure marked as Exhibit
3 2?

4 A. Could you repeat the question?

5 Q. Sure. Let me try and rephrase it.
6 Exhibit 2 says certain things about your Ford
7 general retirement plan, correct?

8 A. Yes.

9 Q. Are you receiving what you should be
10 receiving, in terms of your Ford general retirement
11 plan benefits at this time?

12 A. Yes.

13 Q. Okay. We've heard a lot of discussion
14 about representations or promises, I think the term
15 has been used, that were made to Ford transitional
16 employees that have not been followed through by ZF
17 Batavia. Are you aware or have an opinion about
18 any such promises or representations?

19 A. Not that I can recall right at the
20 moment.

21 Q. Do you feel that ZF Batavia or Ford
22 Motor Company has made any representations or
23 promises to you that have not been followed through
24 on since your hiring on with the company in

1 November of 1999?

2 A. Could you repeat that?

3 Q. Sure. Do you believe that -- try to
4 think of a better way to say this. Do you believe
5 that you have received everything that you are
6 entitled to as a result of your employment with ZF
7 Batavia?

8 MR. SIMON: Rephrase the question
9 again. I'm not sure the witness understands your
10 question. There's a pause there, so I didn't
11 think -- but go ahead, if you understand the
12 question, Bill.

13 THE WITNESS: No, I'm not sure that I
14 do.

15 Q. Okay. Let me try this way. Do you
16 feel that in order to bring you over as an employee
17 to ZF Batavia, that certain representations or
18 promises were made to you sometime during 1999?

19 A. Yes, I do.

20 Q. Okay. What promises or
21 representations were made to you?

22 A. That opportunities that were supposed
23 to be there for job opportunities on the CVT
24 program, the promotional opportunities that were

1 supposed to be there.

2 Q. Were those promotional opportunities
3 within CVT or do you mean in general?

4 A. CVT.

5 Q. Okay. And I didn't mean to interrupt,
6 but what other promises or representations were
7 made?

8 A. I can't think of any others right at
9 the moment.

10 MR. SIMON: Can we just take -- I'm
11 sorry. Can we take just a quick break? Just take
12 five minutes. There's no question pending.

13 MR. HUNTER: Sure.

14 (Off the record: 3:09 p.m. - 3:19 p.m.)

15 MR. HUNTER: We're back on the record,
16 all right.

17 MR. SIMON: Thank you, counsel, for
18 letting us take that break. Mr. DeVito has a
19 condition where he has to visit the rest room and
20 we appreciate that. I think he may have been
21 confused by your last round of questioning. I know
22 you were doing your best. Perhaps Mr. DeVito could
23 explain, if he could.

24 MR. HUNTER: Sure.

1 THE WITNESS: Yeah. I -- I took it to
2 mean that you were asking questions about the
3 conversations with Jerry Priest and -- well, all
4 the other three, not Glenn Marinetti.

5 Part of the reason that I joined the
6 company in -- was this brochure, the agreement that
7 I entered into and it looked like it was identical
8 to Ford, at least on the surface. That's like as
9 I -- as I looked further into things, the -- the
10 retirement was -- it was implied at least in one of
11 the meetings that it would be -- I would retire
12 with the exact same benefits after 35 years with
13 Ford, that I would -- with -- or I mean, after 35
14 years of a combination with Ford and ZF, that I
15 would retire the same as if I had continued my
16 service at Ford.

17 And no one said that that would be any
18 different. The paid days off, whether it was
19 personal leave or -- or bereavement or vacation,
20 the vacation was the only one that -- that I had
21 any questions about because it was stated one way
22 as a transitional employee and another way as a
23 retiree joining. And they made that clear to me
24 when -- when I signed up. Other than that, I

1 thought everything was as this brochure says.

2 And it sounded good. Like I said, the
3 opportunities with -- with the new process and
4 everything and what's in this brochure, that's what
5 helped me make the decision.

6 Q. Well, if I'm not mistaken, the first
7 offer that you were made, you told me you had the
8 gray brochure and you rejected the offer, right?

9 A. Yes.

10 Q. And the second offer, you had the gray
11 brochure and you rejected that offer as well,
12 right?

13 A. Yes, and it had --

14 Q. And on the third offer, you were given
15 a promotion, in terms of responsibilities. And
16 that offer was accepted, correct?

17 A. Yeah, that's correct.

18 Q. And so the offer that you accepted had
19 very little to do with the gray brochure, but
20 rather, the fact that you were given a promotion
21 that included a significant bump in pay from what
22 you had at Ford?

23 A. That offer only came about after I was
24 made an offer from Sharonville. And the reason I

1 accepted it was because it was something different
2 than what I had been doing. It didn't have to be a
3 promotion. It could have been a lateral move.

4 I had been stuck at Batavia in a
5 direct supervisory role the whole time I'd been
6 there. I got a couple title changes and a -- and
7 promotional increase and -- and actually a
8 promotion to the utility supervisor.

9 That was -- that, plus the -- this
10 brochure was why I made the decision. The biggest
11 decision was not wanting to be a production
12 supervisor to the end of my career. And I saw an
13 opportunity to not do that, and they're the ones
14 that came up with the -- the promotional
15 opportunity because they wanted to maintain me in
16 production.

17 Q. So what specifically in the gray
18 brochure, then, did you rely upon?

19 A. Well, the overtime, the paid personal
20 days being the same, the -- the vacation, at the
21 time I made the decision, was going to carry over
22 my current vacation, which was five weeks, which
23 was significant.

24 Q. Okay. What else?

1 A. The overtime maintaining the same
2 policies that Ford had in place.

3 Q. Okay. What else? And I would note
4 for the record you have the gray brochure in front
5 of you. I mean, do you remember or if -- you want
6 to read the brochure --

7 A. I was going to say, I need to look at
8 it as you keeping asking me more 'cause I'm
9 forgetting. The merit increase program.

10 MR. SIMON: Can you see without your
11 glasses, Bill?

12 THE WITNESS: Yeah, I'm -- because of
13 my diabetes I wind up to where I -- sometimes I
14 have to have them; sometimes I don't to read, so --
15 the holidays, the bereavement was supposed to
16 mirror the package that Ford had.

17 Q. Where does it say that in the gray
18 brochure?

19 A. It -- it doesn't say that here.

20 Q. Okay.

21 A. But that was one of the things that we
22 were told in the -- in the group meetings.

23 Q. But you testified earlier that there
24 was nothing that was represented to you by

1 Mr. Marinetti or others that wasn't followed
2 through on.

3 MR. SIMON: I don't think that's what
4 he represented. Go ahead and answer.

5 A. Well, I didn't look through for any
6 specific item. The three-day bereavement leave is
7 something that just personally hit me this year.
8 So there was a lot of things that were covered in a
9 short period of time and bereavement is not one
10 that you really count on being there. It's
11 something when you need it, it's there. It's
12 not -- and when they covered it in the general
13 population meetings in the cafeteria, they just
14 touched on the highlights and made the comments
15 about mirroring or being identical to -- to the
16 Ford benefits that I'd been used to.

17 Q. When I asked you earlier about the
18 group meetings, you told me you couldn't remember
19 any specific comments or what was said. Are you
20 telling me now that at those general group
21 meetings, comments were made that the benefits
22 would mirror the Ford benefits?

23 MR. SIMON: Object. That
24 mischaracterizes what he said, but go ahead and

1 answer.

2 THE WITNESS: What'd you say?

3 MR. SIMON: I just objected that that
4 mischaracterized what you've testified to, but you
5 can answer his question.

6 A. Well, as I'm reading through the
7 brochure seeing things, like the paid holidays
8 and -- and under leaves, it's got funeral, the paid
9 sick days. I remember the general comments and
10 some of the questions that were asked by people
11 after the meeting, as I read some of this.

12 And also some of the things that were
13 covered in the meeting were covered, like the 401K
14 stuff were covered in the meeting, just as a
15 general statement. And they had the guy from
16 Fidelity there at the second meeting.

17 So there were -- there were things
18 that were asked individually by myself and other
19 people of Karl Kehr and the representative from
20 Fidelity Investments. And I think that was the
21 meeting that they introduced -- Tony DeShaw was the
22 guy in charge of the ZF salaried benefits. So
23 those -- those weren't covered in the general
24 meeting. They were covered individually or with

1 small groups.

2 Q. You made a comment that you asked
3 questions. Do you remember what questions you
4 asked?

5 A. The one that I can -- that I can say
6 for a certainty was what investments were available
7 to us under the ZF Batavia 401K? This was -- this
8 brochure was not available at that time and they
9 were still working on what funds would be
10 available. The only thing that they did say was
11 that Ford stock was not going to be an option.

12 Q. You made reference to the fact that
13 you relied on the gray brochure with respect to
14 vacation. What was your understanding as to the
15 vacation? Mr. DeVito, if you want to use that to
16 refresh your recollection, that's great. I mean,
17 if you can remember --

18 A. Well, I forget how it was stated that
19 they -- as a transitional employee, I'd carry
20 forward the five weeks vacation and would retain
21 that during my employment there. It's not in this
22 brochure, but -- because it says 15 years plus.

23 Q. So do you receive five weeks vacation
24 currently?

1 A. No.

2 Q. Any idea why not?

3 A. When they made me the promotional
4 opportunity and I declined it originally, it was --
5 I -- I noted on the bottom of the page -- as they
6 instructed me at the time, that if I wanted to
7 retire and -- that it would change the -- let me
8 see what they call it here. The one-time signing
9 bonus, it would change that. The others had a
10 signing bonus and -- I don't know. I don't
11 remember what they called the other bonus, and that
12 I would be limited to three weeks vacation, but I
13 could purchase a week.

14 Q. Specifically your hire letter, Exhibit
15 99, sets forth a special term or condition for your
16 employment, doesn't it?

17 A. I'm not sure I understood the
18 question.

19 Q. Exhibit 99 sets forth a -- something
20 very different, in terms of vacation than what's
21 contained in Exhibit 2 for vacation, correct?

22 A. Yes, it does.

23 Q. It's -- and you understood that
24 Exhibit 99, you needed to negotiate something

1 different than what was contained in the gray
2 brochure, correct?

3 A. No, I did not think it was negotiable
4 at all.

5 Q. Well, is what's provided for vacation
6 in the gray brochure, Exhibit Number 2, the same as
7 what's provided for in your hire letter, Exhibit
8 99?

9 A. I'm not sure I understand the
10 question.

11 Q. You see the first bullet point on
12 Exhibit 99?

13 A. Yes.

14 Q. It talks about three weeks of vacation
15 per year parens "(pro-rated based on hire date for
16 1999)" end parens. Do you see that term?

17 A. Yes.

18 Q. Does that term match what is stated as
19 to vacation with respect to Exhibit 2?

20 A. No.

21 Q. Is that a negotiated term between
22 yourself and ZF Batavia?

23 A. That was part of their offer to me.
24 There was no negotiation on my part.

1 Q. Okay.

2 A. I was restricted to take it or leave
3 it.

4 Q. Mr. DeVito, we've handed you what's
5 been marked for identification purposes as Exhibit
6 100. I would ask that you take a couple minutes to
7 read through that, please.

8 A. Okay.

9 Q. You've had a chance to review Exhibit
10 100?

11 A. Yes.

12 Q. Is that your employment application
13 for ZF Batavia?

14 A. Yes.

15 Q. On the second page of Exhibit 100, it
16 appears to have your signature there in three
17 different places?

18 A. Yes.

19 Q. Is that, in fact, your signature?

20 A. Yes, it is.

21 Q. And you read and understood this
22 document certainly before you signed it?

23 A. Yes.

24 Q. And prior to signing Exhibit 99 or

1 100, I think you told me you had the gray brochure,
2 correct?

3 A. Yes.

4 Q. And you read it and understood that
5 document?

6 A. I understood most of the document, I
7 should say.

8 Q. What --

9 A. There's other questions that I -- that
10 I should have asked, I guess.

11 Q. Okay. Well, what parts of Exhibit 2
12 didn't you understand?

13 A. Well, I guess I made some assumptions
14 based on what Ford had -- Ford had done over the
15 years. Their merit increase program, their annual
16 incentive plan and the 401K because I'd never
17 participated in a 401K before.

18 Q. Okay. So you didn't understand the
19 provisions in the gray brochure regarding those
20 items?

21 A. And probably some more if I reread the
22 whole thing, yeah. That's what I could -- that's
23 what I can state, too, yes.

24 Q. Well, let's take a minute, I guess,

1 and go through the gray brochure and tell me if
2 there's anything else in there you did not
3 understand.

4 A. Well, I guess, based on what I -- what
5 I was told and what I read, I took it as an
6 agreement and a -- and a contract between me and
7 the company or a part of it, part thereof, with
8 this being another part of it.

9 Q. I think the question that I had asked
10 you is, other than the AIP, the merit and the 401K
11 that you told me about before, was there anything
12 else in Exhibit 2 that you did not understand?

13 A. Not that I can tell right offhand.

14 Q. Okay. In your answers to
15 interrogatories, you indicated that you believe ZF
16 Batavia owes you approximately \$33,200 in --
17 somehow related to overtime. Do you recall that
18 number?

19 A. Yes.

20 Q. Okay. Can you tell me what comprises
21 that number? What does that represent?

22 A. That's the overtime, lost hours that I
23 was required to put in that there was no overtime
24 compensated for.

1 Q. From what period to what period, sir?

2 A. It was sometime starting in October of
3 2000.

4 Q. Until roughly May when those answers
5 were supplied?

6 A. Yes.

7 Q. Okay. What I gather --

8 A. That was also AIP bonus that I did not
9 receive -- or is that what they call it? Anyway,
10 annual incentive program.

11 Q. Okay. We'll come back to that in a
12 second. But I would gather, then, that your
13 feeling is that prior to October of 2000, you were
14 paid what you thought you were going to be paid?

15 A. Well, they changed -- they changed my
16 job responsibility sometime and included --
17 included all the MPS work that I'd been doing and
18 the -- they changed the title of the champion and
19 assigned me to -- to supervise some group leaders,
20 as well as doing departmental planning and
21 budgeting.

22 And I was told that if I couldn't fit
23 that in the regular day, I was expected to have it
24 on time, so -- and they didn't care how much casual

1 time I put in.

2 Q. I think what I had asked you was prior
3 to October of 2000, you were paid, in terms of
4 overtime compensation, that which you felt you had
5 bargained for? You got what you were supposed to?

6 A. I -- I can't really answer that 'cause
7 I don't -- I don't have access to the pay records
8 and my time statements to see if I was paid every
9 minute I put down.

10 Q. Well, what's the --

11 A. Every hour, I should say.

12 Q. What's the difference? I guess, why
13 did you start in October of 2000 with that number,
14 as opposed to December 1 of 1999?

15 A. Well, the very first package that I
16 had to present, I spent 20-some hours in the plant
17 without pay at -- let's see. I was trying to -- I
18 think Mr. Pablice was my supervisor at the time and
19 he told me that I would get it done. Anyway, it
20 was due for the November review -- or I mean, the
21 October review, which came up early in November.

22 Q. You used the term "casual time." What
23 is casual time?

24 A. That's time required to do your job

1 that's nonpaid.

2 Q. And certainly Ford Motor Company had
3 casual time, did it not?

4 A. Yes.

5 Q. And so if you thought things were
6 going to be the same at Batavia as they were at
7 Ford, then certainly you thought you would have
8 casual time at ZF Batavia, correct?

9 A. Well, yes, I did.

10 Q. Okay.

11 A. And I also assumed it would be similar
12 to what Ford's was, which was no more than 45
13 minutes a day.

14 Q. Ford had a written policy about that?

15 A. At one time, yes, they did.

16 Q. But certainly not in 1999, did they?

17 A. I don't know that it had ever been
18 changed.

19 Q. I've had testimony from other
20 plaintiffs in this litigation that told me that
21 casual time could have gone up to almost an hour.
22 Would you tell me, then, that that testimony was
23 incorrect?

24 MR. SIMON: Just object to the extent

1 he wasn't here to hear testimony, so the record
2 speaks for itself as to what they said. You can
3 answer.

4 A. I would say that -- to coin a phrase
5 that Len Sennish made when he -- when he made this
6 presentation about November the 15th about overtime
7 was you had to work at least one hour of casual
8 time before you started your overtime and you could
9 work all the casual time you wanted.

10 So I would say that's up to the
11 individual whether they went over that or not. And
12 that would go for Ford with the 45 minutes.

13 Q. Well, certainly the company has the
14 right to tell you or give you certain assignments
15 with respect to your work, right?

16 A. Yes.

17 Q. And Mr. Pablice never told you that
18 you needed to stay in the plant for 20 hours to get
19 your work done, correct?

20 A. No, he didn't -- he didn't say 20
21 hours, no. He said I expect you to stay tonight
22 and get it done.

23 Q. Okay. He expected you to give --

24 A. And that was after -- and that was

1 after a 10-hour day.

2 Q. Okay. And that sounds like it was one
3 occasion?

4 A. No, there was more than one occasion.

5 Q. What occasions were there?

6 A. There was -- every quarterly review
7 because every other area manager that they had had
8 an MPS to do the work for them. I do not have --

9 Q. Okay.

10 A. I did not have a maintenance MPS to
11 gather the data for that, so I had to do it all.
12 There was also an annual review that was due in
13 January that I had to prepare for. I was in the --
14 I was in the facility a total of 27 hours getting
15 prepared for that. And subsequently in February, I
16 was removed from the job and they put a maintenance
17 MPS and a production MPS and a business unit
18 manager in to replace me.

19 Q. As I recall, I believe it was sometime
20 in 2001, you had a reduction in responsibilities in
21 the company, didn't you?

22 A. Yes.

23 Q. Do you have any documents or anything
24 else that helps support your claim for this

1 \$33,200?

2 A. I have -- I have some of my time
3 statements, but not all of them.

4 Q. Okay.

5 A. And I -- the one that I manually fill
6 out, I put in factual starting times and quitting
7 time. Did not put any overtime charge in 'cause I
8 was instructed not to.

9 Q. Who instructed you not to put in
10 overtime?

11 A. Ray Pablice.

12 Q. And is that because you were an MR
13 band employee?

14 A. If I was, they never did change
15 anything that indicated that. He -- he had hired
16 in after I -- after I had been on the job about two
17 years -- or no. About a year, I guess. Can I get
18 some water?

19 MR. HUNTER: Sure.

20 (Off-the-record discussion.)

21 Q. We were talking about overtime and I
22 just -- I guess I want to be clear. You're not
23 saying you've never been paid overtime by ZF
24 Batavia, correct?

1 A. Ask that again, would you please?

2 Q. Are you telling me that ZF Batavia has
3 never paid you overtime?

4 A. No, they've paid me overtime.

5 Q. Okay. But at some point in time, you
6 quit receiving any overtime or what happened?

7 A. Effective when they put me in the area
8 managers' position, I was told that I would receive
9 no more than what my departments were scheduled,
10 minus the hour casual time.

11 Q. And you feel that was in -- I'm sorry.
12 Go ahead.

13 A. And that was for five departments and
14 I was paid what the masses were scheduled. So the
15 one that had the most people working, if I had
16 people in there 12 hours and I needed to be there,
17 I only got paid for one hour overtime.

18 Q. Okay. So if I understand what you're
19 telling me, if there was production scheduled and
20 you had a team in and the team was scheduled for
21 overtime, you were paid the same overtime they were
22 paid?

23 A. Excluding the hour casual time.

24 Q. Understood, excluding the hour of

1 casual time. So basically you were paid for the
2 scheduled overtime that you were there?

3 A. To the best of my knowledge, I was.

4 Q. Okay. You made a mention about --

5 A. That's prior to the October date.

6 Q. Okay. What happened after the October
7 date?

8 A. Well, that was when they switched my
9 position and who I was reporting to and I was
10 instructed by Mr. Pablice that I wouldn't get paid
11 and he -- he refused to sign a time statement when
12 I put it on the first one.

13 Q. Okay. Did you receive a promotion at
14 that point?

15 A. No, sir.

16 Q. Okay. You just got changed -- your
17 supervisors changed?

18 A. My supervisor and my job
19 responsibility changed to encompass having three
20 supervisors reporting directly to me.

21 Q. Then why isn't that a promotion?

22 A. Well, the explanation to me was under
23 the broad brand that ZF uses, that they could --
24 that was part of their process and the way they

1 handled it, it was not a promotion. It was just
2 changing my specific assignment.

3 Q. Did you have greater responsibilities?

4 A. Yes.

5 Q. You had more people reporting to you?
6 Did you receive an increase in pay?

7 A. No, sir.

8 Q. Just extra responsibilities and more
9 people reporting to you and a different title?

10 A. And not all the people that --
11 everybody at the same level had to do some of the
12 paperwork and legwork. Like I said, the MPSS
13 are -- they've changed the titles about three times
14 since Dick Newark's been the plant manager and
15 they've change the responsibility that goes with
16 it.

17 Q. All right. With respect to the gray
18 brochure, were your discussions with Mr. Priest,
19 Mr. Saleh, Mr. Williams or Mr. Marinetti, was there
20 ever any discussion about what your job
21 responsibilities were going to be at Batavia?

22 A. Specifically to the gray brochure, I
23 mean -- because one of these was discussed every
24 time. So, yes, there were some specifics, but

1 there were also some generalities, like the MPS job
2 was basically a combination utility supervisor to
3 fill in when people were off and to -- to take care
4 of the paperwork and projects, the projects that
5 they -- for the next quarter or the next year and
6 to do the monthly reports --

7 Q. Okay. I think --

8 A. -- which summarize everything that is
9 under the superintendent or the area manager title.

10 Q. I think maybe we've had a bit of a
11 disconnect. But are you telling me that your --
12 what job you would be doing at Batavia was
13 discussed with Mr. Williams, Mr. Priest, Mr. Saleh
14 or Mr. Marinetti prior to your signing?

15 A. Not with Mr. Marinetti. It was
16 generalized with Mr. Priest and Mr. Saleh. It
17 was -- yes, the specific job was discussed.

18 Q. Okay. But that specific job was the
19 job that you were hired on as, correct, which was
20 the MPS?

21 A. Yes.

22 Q. Did you ever discuss with them about
23 being an area manager at Batavia?

24 A. No.

1 Q. Awhile ago you mentioned something --

2 A. First, they made the area managers'
3 job was called a champion by Mr. Newark. Then some
4 subsequent conversations with -- that included --
5 Dave Adams didn't like the term, so they changed it
6 to area manager. That position has changed
7 three -- actually four times since he's been the
8 plant manager.

9 Q. Okay.

10 A. And there's no -- no additional
11 compensation as the job changes or is added to or
12 taken away from.

13 Q. You made a comment awhile ago about
14 AIP. And I think you said something about that
15 being a component of the \$33,200 number?

16 A. If I did, I was -- I wasn't really
17 thinking the AIP. I was thinking about the -- I
18 forget what they call it. Defined contribution or
19 something like that. I don't know if it's in here
20 or not. Part of the 401K process is what I was
21 thinking, not the -- anyway, it's --

22 MR. SIMON: Interrogatory answers
23 referenced 401Ks, so apparently Mr. DeVito is
24 confused.

1 Q. Okay. So the AI -- do you have an
2 issue with ZF Batavia with respect to the AIP
3 payment?

4 A. Yeah, I received none for -- be 2001.

5 Q. Do you have any understanding as to
6 why you received none?

7 A. The only -- the only explanation I had
8 for not receiving one was that I worked excessive
9 overtime and made too much money.

10 Q. And who told you that?

11 A. Chuck Hukan. And at that time, I
12 asked for a meeting with Dick Newark, the plant
13 manager --

14 Q. Okay.

15 A. -- because I worked significant less
16 overtime than the top five people in the building,
17 which were the -- supposedly the only ones that the
18 rumor mill had that were not receiving an AIP and
19 they -- they all received 50 percent and I received
20 zero.

21 Q. Who were the top five in the plant?

22 A. They were Bob Price, John Mosely.
23 Right at the moment it alludes me on who the other
24 three are.

1 Q. When you say "the top five," in terms
2 of top five in the amount of overtime compensation?

3 A. Yes.

4 Q. All right. You mention that 401K is a
5 component of your loss. How is that?

6 A. Because it's based on percentage of my
7 income.

8 Q. Okay. And --

9 A. And shoot. I can't think of the name
10 of the term. Anyway, there's --

11 Q. You mean the match?

12 A. Yeah, the match. There's an
13 additional match for the transitional employees, so
14 it impacts both those.

15 Q. Okay. And we talked before about the
16 gray brochure and you indicated that you had read
17 and understood the gray brochure. Do you remember
18 that discussion?

19 A. Yes.

20 Q. And the gray brochure provides that
21 the items set forth in the gray brochure are
22 subject to change, correct?

23 A. Yeah, I read that somewhere.

24 Q. All right. And so you knew when you

1 signed on with Batavia and, in fact, having
2 rejected two prior offers, that the terms and
3 conditions of your employment with Batavia were
4 subject to change, correct?

5 A. I didn't think that the things in the
6 brochure were subject to change, no, I didn't.

7 Q. Even though the brochure specifically
8 says they're subject to change?

9 A. Yeah, I --

10 MR. SIMON: Objection. The document
11 speaks for itself. Go ahead.

12 A. That's been kind of standard verbiage
13 on any employment agreement or benefits brochure
14 that I've ever received. And some of them are more
15 inclusive than this one, but -- because most of the
16 benefits that the salaried employees received at
17 Ford -- and RCA is another employer that I had
18 where we're impacted by contractual negotiations.
19 That's the type of changes that I have experienced
20 in my work life. So that's what I thought that
21 referred to.

22 Q. Okay.

23 A. I'm talking about UAW -- or union
24 contract, not --

1 Q. But certainly you're not covered by a
2 collective bargaining agreement here?

3 A. No, I'm not.

4 Q. Okay.

5 A. But things like vacation, holidays
6 were -- we get the same thing. So do most UAW
7 salaried supervisors usually get the same.

8 Q. All right. With respect to the
9 personal days and vacation days that you'd
10 mentioned before, you understood that, again, those
11 were subject to change because the gray brochure
12 says they're subject to change?

13 A. No, I don't -- like I said, every job
14 I've ever had, the -- the vacation was pretty much
15 a policy that was set, established and there wasn't
16 any flexibility in it.

17 Q. Okay. You've indicated to me that you
18 believed the gray brochure because it was in
19 writing and given to you, correct?

20 A. I believed it because of the
21 statements that were made by the people making the
22 presentation and then handing it to me in writing.

23 Q. All right. And it says in writing
24 that it's going to change and you just simply chose

1 not to believe that?

2 MR. SIMON: Objection.

3 Mischaracterizes the record. Document speaks for
4 itself. You can answer.

5 A. I wouldn't say I made a conscious
6 decision to not believe it. I would say that in my
7 work life, that I understand certain things are
8 going to change. For example, prescription
9 coverage, the amount that companies that I've
10 worked for has covered changes, vacations were not
11 flexible, never did change or they always -- if
12 there was a change, I should say, 'cause I only
13 worked one place where it did change and it went
14 up. Once again, that was a negotiated UAW
15 facility.

16 Q. With respect to the annual incentive
17 plan at Batavia and what's listed in the gray
18 brochure, Batavia has an annual incentive plan,
19 correct?

20 A. Yes.

21 Q. And certainly Batavia has a merit
22 increase program, correct?

23 A. Yes.

24 Q. And you thought that you would receive

1 how much annually under the annual incentive plan?

2 A. There was not a discussion of how much
3 the program would be. It would be how close you
4 came to making all of the objectives.

5 Q. Okay.

6 A. And also which of the broad bands you
7 were in. Like if you're in the manager role or the
8 GSR role, you -- they were different.

9 Q. Certainly that's not indicated
10 anywhere in the gray brochure?

11 A. No.

12 Q. You received a --

13 A. But it was discussed in the meeting
14 subsequent to the offers.

15 Q. Do you remember what was discussed?

16 A. Which band you fell in, what
17 percentage, what the percentage ranges were. I
18 don't remember what they are right offhand, up to a
19 maximum.

20 Q. There was a maximum set?

21 A. Yes.

22 Q. You remember what that was?

23 A. No, I don't really.

24 Q. Okay. When you say that it was -- the

1 benefits were to mirror Ford, do you know today how
2 the current benefit structure at ZF Batavia
3 compares to Ford?

4 A. The -- the only one that I know about
5 is the -- the overtime rates.

6 Q. Okay. What about the overtime rate?

7 A. Ford's are -- Ford is \$6 an hour
8 higher, I think. I can't remember the specifics,
9 but like ZF's is like \$47 and some change for
10 Sunday and Ford's is \$54 and some change, I think.

11 Q. Do you know anything else about how
12 things compare with folks that are still working
13 for Ford?

14 A. Their bereavement increased where they
15 can -- for immediate family members, they get five
16 days.

17 Q. Okay. Is it Ford's --

18 A. There's -- there's nothing that -- for
19 bereavement, that is one day for Ford. It's three
20 or five.

21 Q. The benefit plans for Ford, in terms
22 of bereavement, apparently, then, they were subject
23 to change?

24 A. Once again, that was negotiated during

1 the UAW contract and the salaried people got the
2 same benefits.

3 Q. Okay. But you understood, then, while
4 you worked at Ford, that your terms or conditions
5 of employment could change from time to time?

6 A. Certain things have changed over the
7 years, yes.

8 Q. But that all the things could change?

9 A. Was I aware that all those things
10 could change, no.

11 MR. HUNTER: Okay. Well, it's getting
12 late. I will allow Mr. VanWay to inquire.

13 MR. VANWAY: Mr. DeVito, before I
14 start asking questions, do you need a break or are
15 you ready to go on?

16 THE WITNESS: I'm all right.

17 EXAMINATION

18 BY MR. VANWAY:

19 Q. Mr. DeVito, my name is Jeff VanWay. I
20 don't believe we've met before. I represent Ford
21 in this case.

22 A. Okay.

23 Q. You are aware, aren't you, that you
24 filed claims in this case against both ZF Batavia

1 and Ford?

2 A. Yes.

3 Q. Why have you filed claims against Ford
4 in this case?

5 A. I'm sorry. Can you --

6 Q. Yes, sir. Why have you filed claims
7 against Ford?

8 MR. SIMON: Objection, to the extent
9 that it calls for a legal conclusion. Obviously
10 Mr. DeVito's lawyers filed the complaint on his
11 behalf. But you can go ahead and answer the
12 question as best you can.

13 Q. I just want your understanding, Mr.
14 DeVito, as to why you have filed this lawsuit
15 against Ford.

16 A. Well, the --

17 MR. SIMON: Same objection. Go ahead.

18 A. The first statements that were made to
19 the salaried population were made by the Ford
20 people about the joint venture and the subsequent
21 meetings were -- were conducted by Ford people and
22 most of the questions and reassurances came from
23 Ford.

24 So, therefore, it appeared that they

1 had a pretty big interest in getting people to
2 transition over and made promises that were
3 subsequently included in what ZF does.

4 Q. Okay. Any other reason, Mr. DeVito,
5 that you've filed these claims against Ford?

6 A. Not that I can think of right now.

7 Q. Now, you testified about several
8 different promises that you believe were made or
9 representations that were made that haven't been
10 followed through on. I don't want to go through
11 all of those again. I just want to make sure I
12 understand your testimony and I haven't missed any.

13 I believe you said overtime, personal
14 days, vacation days, merit increase program,
15 bereavement leave, AIP and then CVT opportunities.
16 And I'm not trying to trick you, Mr. DeVito.
17 That's just all I had in my notes from what you had
18 said.

19 As you sit here, are you aware of any
20 other promises or representations that you believe
21 were made to you that haven't been followed through
22 with?

23 A. Yeah. Dave Adams one time made --
24 made a promise to anybody that felt like it was a

1 mistake to -- to have left Ford and joined there,
2 that he would help them return to the Ford system.
3 And that, in part, was why I declined the second
4 offer that was made to me because he rescinded that
5 statement.

6 Q. When did Mr. Adams make that
7 statement, do you recall?

8 A. It -- it had to be at the close of the
9 second meeting because the first one, it wasn't
10 discussed at all.

11 Q. So this was before you made the
12 decision to come over to ZF Batavia?

13 A. Yes.

14 Q. And you said later he rescinded that
15 statement?

16 A. Yes.

17 Q. When did he rescind that statement?

18 A. It was -- I'm not really sure. I --
19 had to be before the end of November, but I'm not
20 sure when.

21 Q. November of which year?

22 A. Of '99.

23 Q. Do you know, had you accepted
24 employment with ZF Batavia before he rescinded that

1 statement?

2 MR. SIMON: Objection, asked and
3 answered. I think he explained that, but go ahead.

4 A. That, I can't really say.

5 Q. And I'm not trying to repeat
6 questions.

7 A. He didn't come out and rescind it --

8 Q. I didn't get it.

9 A. -- to everybody. He rescinded it to a
10 couple people that went to him and approached him
11 about doing that very thing that had already
12 joined.

13 Q. Okay. Did he rescind it specifically
14 to you? Did you talk to him --

15 A. No.

16 Q. -- about it?

17 A. No, no, I did not.

18 Q. Okay. At the time you accepted
19 employment with ZF Batavia, signed your offer
20 letter, were you aware that he had rescinded his
21 statement to some other people?

22 A. No.

23 Q. Anything else other than those that I
24 mentioned and then this promise by Mr. Adams, any

1 other promises, representations that you believe
2 were made and not fulfilled?

3 A. Not that I can think of.

4 Q. Okay. Now, would you agree with me
5 that each of these promises that you've listed,
6 including the promise by Mr. Adams, that it was ZF
7 that didn't keep those promises?

8 A. I don't know. I don't know that to be
9 a fact, no.

10 Q. Okay. Well, let's -- with respect to
11 the overtime change, do you know whether Ford made
12 that change?

13 A. I don't know what part they played in
14 it, being the minority partner in the -- in the new
15 organization or being the only customer. I know
16 that they put pressure on to -- to back up on a
17 cost plus agreement where they were paying for the
18 added expense of the excessive overtime.

19 So I don't know how they factored into
20 all of that, but I'm sure they played a part, if
21 not the part as the customer.

22 Q. And when you say you're sure they
23 played the part as a customer, you mean because
24 indirectly they were saying, reduce the amount that

1 you're charging us for these transmissions that
2 you're making?

3 A. Yeah. When they agreed to the cost
4 plus, we were running considerably higher than what
5 was initially quoted, and they agreed to pay it
6 because we were the only supplier that they had.
7 And at some point in time, they decided that that
8 was not economically feasible for them to do after
9 they got into the -- the Firestone tire deal.

10 Q. And then after that, it's your
11 understanding that ZF Batavia made changes in its
12 overtime policy, which resulted in you getting less
13 in overtime?

14 A. Yes.

15 Q. Okay. With respect to the specific
16 changes that were made, you testified about casual
17 time, about the fact that you worked more casual
18 time at ZF Batavia than you did at Ford. Do you
19 know whether Ford specifically was involved in that
20 decision and said to ZF Batavia, change your casual
21 time policy?

22 A. No, I -- I don't know that.

23 Q. Okay. With respect to personal days,
24 you testified as to a change that was made in the

1 personal day policy. Do you know, was Ford
2 involved in that change?

3 A. No, I do not know.

4 Q. Okay. You testified about vacation.
5 Let me just make sure, first, I understood your
6 testimony on vacation. You knew by the time you
7 accepted employment with ZF Batavia that your
8 vacation was going to be different than what was in
9 Exhibit 2, right --

10 A. Yes.

11 Q. -- the gray brochure? Okay. You knew
12 you were only going to get three weeks?

13 A. Yes.

14 Q. And are you saying that that hasn't
15 been fulfilled, that you didn't get the three weeks
16 that you were supposed to get?

17 A. No, I have got the three weeks.

18 Q. Okay. So don't -- tell me if I'm
19 wrong. But everything that was represented to you
20 regarding vacation, then, has been fulfilled?

21 A. Yes.

22 Q. Okay. Merit increase, what has not
23 been fulfilled with regard to merit increase?

24 A. Well, it was explained to me -- I got

1 a -- I got the lowest merit increase I ever had in
2 my whole career. I got a .9 merit increase from ZF
3 and the explanation that -- I forget. I think it
4 was Hassan, but I couldn't swear to it. No, it was
5 Jerry Priest. The explanation that he gave me that
6 part of the agreement was a transitional employee
7 with ZF was that we would get reduced merit
8 increases till we fell back in line with -- and/or
9 the people that worked for ZF caught up with the
10 pay scale.

11 Q. When was this? Do you recall this 0.9
12 percent merit? What year was that that you
13 received it?

14 A. No, I don't right offhand. It was the
15 first merit increase I received, but I don't
16 remember when that was.

17 Q. During any of the meetings that you
18 had with individuals from Ford or ZF Batavia, prior
19 to the time that you became a ZF Batavia employee,
20 did anyone in those meetings ever tell you that
21 your merit increases would be the same as what new
22 hires received?

23 A. I -- I don't know. I can't recall if
24 they did or not.

1 Q. Okay. There's -- I'll submit to you
2 that there's nothing in the gray brochure that says
3 how much merit you would get or whether you would
4 get more or less than the new hires. You just
5 don't remember whether anything like that was
6 communicated to you?

7 A. There was a piece of paper that was
8 part of the slides they showed on the screen, but I
9 never was -- never was -- had a copy of -- that did
10 state that there would be a difference. I don't --
11 I don't remember how it was worded.

12 Q. And did it -- do you remember, did it
13 say what that difference was going to be that you
14 would receive more or less?

15 A. No, just that there would be a
16 difference for the transitional employees.

17 Q. And, in fact, it's your understanding
18 that there has been a difference, right, between
19 the transitional employees and the new hires?

20 A. Yes.

21 Q. When you were with Ford, your merit
22 increase, the amount of it varied from year to
23 year, didn't it?

24 A. Yes.

1 Q. Did the percentage vary as well from
2 year to year?

3 A. Yes.

4 Q. Ever any years you didn't receive a
5 merit increase from Ford?

6 A. Yeah, there were years I didn't. But
7 at the time, there was -- the salary pay increases
8 were linked to the contractual increases and
9 they -- when they switched to total merit system
10 instead of a -- roughly a three percent annual
11 increase, that's -- that's when -- there were years
12 you didn't get it.

13 Q. Okay. You testified earlier about
14 your belief -- and I guess you referred to the
15 subject to change language in Exhibit 2, that it
16 had been your experience that the benefits that
17 were subject to change were those that might be
18 changed also for the UAW represented employees.

19 You understood, didn't you, that ZF
20 Batavia, as a new company, was going to have to
21 enter into new agreements with the UAW?

22 A. Yes.

23 Q. And that Ford would have agreements
24 with the UAW that might be separate from what ZF

1 Batavia going forward negotiated with the UAW?

2 A. Would you repeat that?

3 Q. Sure. You understood obviously that
4 Ford and ZF Batavia were different companies,
5 right?

6 A. Yes.

7 Q. And that Ford, as a separate company
8 from ZF Batavia, would negotiate separately with
9 the UAW for compensation and benefits for Ford UAW
10 employees? You understood that that would happen,
11 didn't you?

12 A. Yes.

13 Q. And you also understood that ZF
14 Batavia, as a separate company, would negotiate
15 separately with the UAW for compensation and
16 benefits for ZF Batavia UAW employees?

17 A. Yeah, the ones that are not Ford
18 employees do have a different agreement.

19 Q. Okay. Now, with respect to the merit
20 increase and the .9 percent merit that you received
21 one year, do you know whether anyone from Ford was
22 involved in the decision to only award you a .9
23 percent merit increase?

24 A. That, I do not know.

1 Q. You testified about changes in
2 bereavement. And I thought you also testified that
3 Ford has since made changes in their bereavement
4 leave; is that right?

5 A. Yeah. The last contract, they
6 increased the number of days for immediate family
7 members to five instead of three.

8 Q. Okay. So at the time you left Ford,
9 it was three?

10 A. Yes.

11 Q. Okay. And at ZF Batavia, it's three
12 as well?

13 A. It's one for -- for some qualified
14 family members; three for others.

15 Q. Have you had occasion to need to use
16 the bereavement leave policy since you've been at
17 ZF Batavia?

18 A. Yes.

19 Q. And on the occasion that you needed to
20 use it, did you take one day or three days?

21 A. I took three days off.

22 Q. Your claim, then, is that you should
23 have been allowed to use five days?

24 A. Yes.

1 Q. Because that's what Ford's new --

2 A. Well --

3 Q. -- policy was sometime after you left
4 Ford?

5 A. No. My claim is that I should have
6 had three days for my father-in-law and I had
7 one --

8 Q. Oh, okay.

9 A. -- paid day.

10 Q. Is --

11 A. And the statement was made that I
12 could -- that's the procedure. That's the --
13 that's the way it's established and I could take
14 all the vacation days I wanted with it, so --

15 Q. Is that -- I just want to make sure
16 that I'm clear. Is it just the one time that
17 you've used the bereavement leave since you've been
18 at Batavia, ZF Batavia?

19 A. Yes.

20 Q. And that's the instance you just
21 talked about with your father-in-law?

22 A. Yes.

23 Q. Okay.

24 A. The -- the other thing I'd like to say

1 about that is it's a change that -- that normally,
2 with my experience at Ford, there would have been a
3 notice put out if they had to make a change like
4 that, so it wouldn't catch you by surprise at the
5 last minute. And there would be some time that it
6 was cut off. There was nothing done like that at
7 ZF. You get there and you get a surprise.

8 Q. Okay. Do you have any reason to
9 believe that anyone from Ford was involved in the
10 decision that ZF Batavia made to change the number
11 of bereavement days that you were entitled to?

12 A. I don't know that.

13 Q. Okay. You also testified about AIP,
14 and I believe you said that there's one year that
15 you didn't receive an AIP bonus. While you were
16 with Ford, you received profit sharing, correct?

17 A. That's correct.

18 Q. And weren't there some years that you
19 were with Ford that there wasn't a profit sharing
20 pay out?

21 A. Yes, but that was -- nobody got a
22 profit sharing or the bonus. At ZF, it was select
23 people didn't get it.

24 Q. Okay.

1 A. And the criteria changes, depending on
2 who you talk to.

3 Q. Do you have any reason to believe that
4 Ford was involved with the criteria changing as to
5 who got an AIP bonus and who didn't at ZF Batavia?

6 A. I -- I don't know that.

7 Q. Okay. With respect to the CVT
8 opportunities, would you agree with me that there's
9 still an opportunity to work CVT at ZF Batavia?

10 A. I don't know that I can answer that
11 'cause I don't -- they've changed from a policy
12 where they were out soliciting people to go, to
13 where they started posting jobs while I was off on
14 medical leave, so --

15 Q. Have you ever posted for a job in CVT?

16 A. Like I said, they -- they started that
17 system while I was off. I didn't even know it was
18 in place until just recently when people were
19 complaining that they didn't get considered.

20 Q. Do you have any reason to believe that
21 you weren't considered for CVT, other than the fact
22 that you weren't present in the plant when those
23 jobs were -- became posted?

24 A. When I -- when I questioned Hassan

1 about it a couple years ago, he was told -- or I
2 was told by him that I'm too old and that's the
3 future. I wouldn't be going there.

4 Q. Okay. Do you have any reason to
5 believe that anyone from Ford was involved in the
6 decision not to assign you to CVT?

7 A. Once again, I don't know that.

8 Q. Okay. Now, you would agree with me,
9 wouldn't you, while you were employed with Ford,
10 you didn't have an employment contract?

11 A. I'm sorry?

12 Q. When you were with Ford, you didn't
13 have an employment contract, did you?

14 A. You mean the personal contract between
15 me and Ford?

16 Q. Yes.

17 A. Just what I signed up to on the
18 application, I guess.

19 Q. You weren't aware of any agreement
20 that you had with Ford that said Ford couldn't
21 change your compensation or your benefits?

22 A. I would guess that I -- there's some
23 assumptions that were made based on it being tied
24 to the UAW contract, but no one ever specifically

1 told me they couldn't.

2 Q. And your understanding was that it --
3 if Ford wanted to, they could change your
4 compensation, couldn't they?

5 A. I guess the assumption that -- that I
6 made was, no, they couldn't, as far as decreasing
7 the compensation or taking away compensation.

8 Q. Okay. For example, when -- in those
9 years when you didn't receive a merit increase, did
10 anyone from Ford come to get your approval and ask
11 you, Mr. DeVito, is it okay if we don't give you a
12 merit increase this year?

13 A. No. It was usually determined or set
14 forth by your performance review. So if your
15 performance review was downgraded, it was expected
16 that you wouldn't get as much or, if any, merit
17 increase.

18 Q. And that was, as far as you knew,
19 solely within the company's discretion, right, as
20 to whether or not you were going to receive a merit
21 increase or not? What I mean is they never asked
22 your permission, right? They just did what they
23 believed was right?

24 A. Yes, but there was an opportunity to

1 write a rebuttal to the review and subsequently get
2 the -- the merit increase or a merit increase, I
3 should say.

4 Q. Okay. In those years when there
5 wasn't any profit sharing awarded, again Ford
6 didn't ask you for your approval on that, right?
7 They just said, we're not awarding profit sharing
8 this year, correct?

9 A. The years that I remember that there
10 wasn't one, it was -- they put out a letter to the
11 effect to the general population in the plant,
12 salary and hourly, that there wouldn't be no profit
13 sharing.

14 Q. Okay. The letter told you what the
15 company's decision was?

16 A. Yes.

17 Q. Okay.

18 A. It also stated the reasons, like
19 lagging sales or general economy. That's the two I
20 remember.

21 Q. Okay. I'll show you a few documents,
22 Mr. DeVito. Mark this whatever -- Mr. DeVito,
23 you've been handed what's been marked as Exhibit
24 101, which I'll submit to you is a document that

1 Ford produced in this case that came from your
2 personnel file, your Ford personnel file. And
3 really, I only have a couple of questions.

4 The first is, down at the bottom on
5 the left where it says, "Employee's Signature," is
6 that your signature there?

7 A. Yes.

8 Q. Do you agree with me that you signed
9 this document while you were working for Ford?

10 A. Yeah. When was this dated?

11 Q. It doesn't appear to be dated.

12 A. Huh?

13 Q. It doesn't appear to have a date. Did
14 you work in more than one Ford facility?

15 A. Yes.

16 Q. You worked in Indianapolis first?

17 A. Indianapolis and then here.

18 Q. And then Batavia?

19 A. Yes.

20 Q. Are those the only two facilities?

21 A. Yes.

22 Q. This may clear it up. Is it your
23 understanding that you might have signed one of
24 these at each facility?

1 A. I signed more than one at Indianapolis
2 because I was laid off twice there.

3 Q. Okay. Well, let me show you another
4 one that we'll mark as Exhibit 102. And this
5 document, Mr. DeVito, Exhibit 102 appears to be
6 very similar to Exhibit 101. Again, it's a
7 document from your Ford personnel file. And,
8 again, it appears to be your signature on this
9 document. Do you agree with me that this is your
10 signature?

11 A. Yes.

12 Q. And that you signed this document
13 while you were working for Ford?

14 A. Yes.

15 Q. Okay. Do you recall, Mr. DeVito, when
16 you were with the company in approximately -- with
17 Ford that is -- in approximately 1982, that Ford
18 canceled some vacation days that employees were
19 otherwise entitled to receive?

20 A. I was not aware of it at the time they
21 did it. I was when I was recalled to Batavia.

22 Q. Okay. You later learned that they had
23 canceled some vacation days?

24 A. Yeah.

1 Q. Okay. Was there a period of time
2 while you were with Ford that Ford started issuing
3 comp time instead of paid overtime to certain
4 salaried employees?

5 A. Yes, there was to the engineering
6 group; never to the production group that I'm aware
7 of.

8 MR. SIMON: Are you done with Exhibit
9 101 and 102?

10 MR. VANWAY: I am.

11 Q. Do you recall, Mr. DeVito, there ever
12 being a time that Ford stopped paying time and a
13 half and just started paying straight time for
14 overtime for salaried employees?

15 A. Not that I recall.

16 Q. Just so the record is clear,
17 Mr. DeVito, I've got a couple of other offer
18 letters, which I believe you were presented by ZF
19 Batavia. Just want to go ahead and mark these.

20 Okay. Mr. DeVito, I believe you have
21 in front of you documents -- Exhibit 103 and 104.
22 103, that appears to be the first offer letter that
23 you received from ZF Batavia; is that correct?

24 A. Yes.

1 Q. Okay. And that -- that one, it's not
2 very clear on the copy, but it looks like you
3 declined that one on or about June 11th, 1999.
4 Does that sound about right?

5 A. Yes.

6 Q. And then Exhibit 105 -- 105 -- 104,
7 thank you. Exhibit 104 is the second offer letter
8 you received from ZF Batavia, correct?

9 A. Yes.

10 Q. And you declined this one as well, it
11 looks like on or about October 13th of '99?

12 A. That's correct.

13 Q. Is it your position, Mr. DeVito, in
14 this case that ZF Batavia can't ever change your
15 benefits, or that if they do, it has to be the same
16 as any changes Ford makes down the road?

17 A. I would say that there are some things
18 I feel that they couldn't do, couldn't change based
19 on meetings and the things, questions that were
20 asked and the answers that were given.

21 Q. Things that they can't change,
22 regardless of what Ford might do at any time?

23 A. No. I would think that they were
24 linked with Ford based on who -- who said -- at the

1 time, the Ford HR people and Mike Warden.

2 Q. So if we could set those aside for
3 just a minute, those changes that you believe that
4 ZF makes, they have to be the same as what Ford
5 makes. Are there any other changes, changes that
6 you believe ZF Batavia can't make at all,
7 regardless of what Ford may or may not do?

8 A. I don't know. Would you re-ask that?

9 Q. Sure. My understanding from your
10 testimony is that there are some benefits that you
11 believe ZF Batavia could change only if Ford also
12 changed their policies or benefits with respect to
13 those types of things. Overtime, I think is one
14 that you referenced earlier in your testimony.

15 I'm asking, are there any benefits at
16 all that you believe were represented to you that
17 you would have when you went to work at ZF Batavia
18 that you believe ZF Batavia doesn't have the
19 authority to change without regard to what Ford
20 does?

21 A. Yes, I'd say there's some.

22 Q. And what would those be?

23 A. The 401K.

24 Q. Any others other than the 401K?

1 A. Yeah. There's probably others, but I
2 can't think exactly what they might be right now.

3 Q. Okay. If you think of any while we're
4 still in the deposition today, would you let me
5 know that?

6 A. Yes.

7 Q. Thank you. Now, you received a
8 transition bonus as part of accepting the offer
9 with ZF Batavia, correct?

10 A. No. What I received was a signing
11 bonus on the final offer.

12 Q. Okay. And your signing bonus was
13 \$10,000?

14 A. Yes, paid in three increments.

15 Q. Prior to that -- in your previous
16 offer letters, you've been offered transition
17 bonus, but you declined those offers. Do you
18 remember --

19 A. Yes.

20 Q. Okay. What was your understanding
21 that the signing bonus was for?

22 A. To compensate for no A Plan.

23 Q. Anything else that you believed it was
24 for?

1 A. Yeah. I thought part of it was for
2 the difference between Ford's SSIP and the 401K.

3 Q. Okay. Anything else that you
4 understood the signing bonus to be for?

5 A. That's all I can think of right now.

6 Q. Did someone tell you that that's what
7 the signing bonus was for?

8 A. I -- the A Plan portion of it was
9 specifically said and I -- as part of it because
10 someone asked a question about it and they -- they
11 referred back to that -- or the transitional bonus
12 as being -- to offset that. And I -- I think the
13 same is true for the 401K because it was -- the
14 Ford system was totally paid for and I think we --
15 we have to pay a percentage, a small percentage to
16 Fidelity for transactions and things that wasn't
17 there with Ford.

18 Q. And you said in your answer that you
19 believed that someone was told in one of these
20 meetings that the transition bonus was for the loss
21 of the A Plan, but you didn't receive a transition
22 bonus. So I want to focus specifically on the
23 signing bonus. Did anyone ever specifically tell
24 you what your signing bonus was designed to cover?

1 A. No.

2 Q. And you said you thought maybe it was
3 to compensate for the loss of the A Plan. I
4 believe you testified earlier, once you retired,
5 you got the Z Plan, which is basically the same as
6 the A Plan, right?

7 A. Yes.

8 Q. So when the A Plan went away, you
9 didn't lose anything, did you?

10 A. No --

11 Q. Okay.

12 A. -- not on that.

13 Q. Now, I just want to make sure I
14 understand your testimony. In response to
15 interrogatories in this case, you stated in the
16 interrogatory that you attended the meeting on May
17 27th, 1999. But I heard your testimony earlier
18 today to be a fact that you didn't attend the
19 meeting. So I'm just trying to make sure I'm
20 clear.

21 The May 27, 1999 meeting, you were on
22 vacation and did not attend that meeting, did you?

23 A. That's correct, I did not.

24 Q. You said that there were rumors

1 floating around the plant about when Rick Williams,
2 Jerry Priest and Hassan Saleh joined ZF Batavia. I
3 take it it was important to you that they join ZF
4 Batavia?

5 A. Yeah. It was important that there was
6 some of the upper management that trusted the
7 system and the new -- the formation of the new
8 company enough to join it.

9 Q. But by the time you finally accepted
10 the offer and agreed to come on board, each of
11 those individuals had already accepted and come on
12 board as ZF Batavia employees, hadn't they?

13 A. Yes.

14 Q. All right. Now, with regard to the
15 loss of opportunities in CVT, have you suffered any
16 economic damages as a result of not being assigned
17 to CVT?

18 A. That, I wouldn't really know. I have
19 a --

20 Q. Are there any -- is there a specific
21 promotion that you can point to that you believe
22 you should have received and didn't in the CVT?

23 A. I don't know. Once again, I couldn't
24 really answer that because I don't know all the

1 moves that have been made over there.

2 Q. I believe you testified earlier that
3 with regard to overtime, it was your understanding
4 that ZF Batavia was going to maintain the same
5 policies that Ford had had with regard to overtime.

6 Did someone specifically tell you
7 that, that the overtime policy at ZF Batavia will
8 be the same as it has been at Ford?

9 A. Well, Mike Warden told the group that
10 it was going to -- he either stated identical or
11 mirror the Ford overtime policy.

12 Q. He specifically referenced the
13 overtime policy?

14 A. Yes.

15 Q. With respect to the -- you testified
16 at some length about casual time. And I believe I
17 understood your testimony to be that once you were
18 assigned to a new position that had additional
19 responsibilities, that the amount of casual time
20 that you worked increased dramatically. Is that a
21 fair characterization?

22 A. That's correct.

23 Q. Okay. At Ford, when you worked at
24 Ford, you weren't in that same position, were you?

1 A. No.

2 Q. And you didn't have those additional
3 duties?

4 A. No.

5 Q. Is it fair to say that the additional
6 casual time that you worked was directly related to
7 the additional duties that you'd been assigned at
8 ZF Batavia?

9 A. Yes.

10 Q. And prior to the time that you
11 accepted employment with ZF Batavia, no one had
12 made any representations to you about how you would
13 be paid as an area manager, had they?

14 A. No, they hadn't.

15 Q. Hadn't told you whether area managers
16 would receive overtime or would not receive
17 overtime?

18 A. No.

19 Q. You testified about the top five, two
20 of which I think you were able to name that you
21 believe received a 50 percent AIP in the year that
22 you didn't receive an AIP?

23 A. Would you repeat that?

24 Q. Sure. I think you gave some testimony

1 earlier that in the year you didn't receive an AIP,
2 there were the so-called top five that did receive
3 AIPs?

4 A. That's correct.

5 Q. Okay. And I thought that what you
6 said was that those folks received a 50 percent
7 AIP. Did I get that right?

8 A. Yes, yes.

9 Q. And is that a plant rumor that they
10 received 50 percent or do you know that to be fact?

11 A. The 50 percent is -- that they
12 received half of what they would have got, not 50
13 percent of their pay.

14 Q. Oh, okay. And do you know that to be
15 a fact or is that, again, the plant rumor?

16 A. No, that's a fact.

17 Q. And how do you know that to be a fact?

18 A. I saw at least two of them's checks.

19 Q. They showed them to you?

20 A. Yeah.

21 Q. I believe you testified that with
22 regard to the AIP, it was your understanding that
23 how much AIP you received would be based on how
24 close you came to meeting the objectives that were

1 set for the AIP?

2 A. That's correct.

3 Q. And you understood, didn't you, that
4 it would be management that would determine whether
5 or not you had reached the objectives or not?

6 A. The way they -- the way they've done
7 it, there's a scorecard. You keep your own, your
8 boss keeps one and the plant manager's office keeps
9 another one. And based on the total scores, it
10 wasn't all decided by management. Part of it was
11 by the individuals.

12 And at no time was there any
13 conversation with myself and Dick Newark. And
14 Chuck Hukan was my boss at the time. He had only
15 been in the building a few weeks at the time, so he
16 didn't even know how the system operated --

17 Q. And --

18 A. -- and so he referred everything back
19 to Dick Newark.

20 Q. Okay. And what you're describing with
21 regard to the process, that's the process that --
22 that's how it's worked at ZF Batavia since you've
23 been there --

24 A. Yeah.

1 Q. -- these scorecards or whatever you
2 want to call them? Prior to the time you accepted
3 employment with ZF Batavia, did anyone tell you
4 that there were going to be scorecards kept and
5 everybody would get together and that's kind of how
6 they determined the AIP?

7 A. No.

8 Q. And so it was your understanding that
9 with regard to whether or not you met objectives or
10 not, that would be the company's decision as to
11 whether or not you met the objectives, correct?

12 A. Yes.

13 Q. And I take it you understood that it
14 was possible that there might be years that you
15 might not receive an AIP at all?

16 A. Yes, but that statement was made in
17 general terms that everybody wouldn't receive one.

18 Q. Someone made a --

19 A. If they didn't --

20 Q. I'm sorry.

21 A. If they didn't make a profit, if they
22 didn't -- if they missed all of the objectives --
23 so it wasn't just a blank -- it wasn't
24 individualized.

1 Q. Who made that statement, do you
2 remember?

3 A. No, I don't right offhand.

4 Q. That was at one of these cafeteria
5 meetings, you think?

6 A. I can't really recall if it was that
7 one or if it was one of the first meetings we had
8 looking at individual performance for the -- the
9 area managers.

10 Q. One of the first meetings you had, you
11 mean after you became a ZF Batavia employee?

12 A. No, not after I did, but when they
13 first had some of the area managers assigned, they
14 had a meeting and individuals were invited to
15 attend with their boss there.

16 So it could have been one of those
17 meetings. It could have been one of the general
18 plant meetings. I really don't recall.

19 Q. And those meetings with the area plant
20 managers, did you attend one of those meetings?

21 A. I attended more than one.

22 Q. If you could pull out Exhibit 2, the
23 tri-fold brochure. I believe you testified earlier
24 that you took this document to be an employment

1 contract between you and ZF Batavia?

2 A. Yes.

3 Q. If you would, turn to the second page
4 of this document, the very bottom. You see where
5 there's the language there in between the black
6 lines?

7 A. Yes.

8 Q. Last sentence of that first full
9 paragraphs says, Plan provisions and eligibility do
10 not constitute an employment contract with any
11 individual. Do you see where I'm reading from?

12 A. Yes.

13 Q. Do you remember reading that at the
14 time you reviewed the gray brochure, Exhibit 2?

15 A. I can't say that I did or that I
16 didn't. I don't recall.

17 Q. But you would agree with me, wouldn't
18 you, Mr. DeVito, that since you've become a ZF
19 Batavia employee, that your -- your gross annual
20 wages have been more at ZF Batavia than they were
21 when you were at Ford?

22 A. I would say in general, yes, yeah.

23 Q. And would you agree also that setting
24 aside the one year that you didn't receive an AIP

1 bonus, that in most years, your AIP bonus from ZF
2 Batavia is larger than the profit sharing that you
3 received while you were at Ford?

4 A. No.

5 Q. Do you remember what the profit
6 sharing you received in the last few years from
7 Ford was?

8 A. No, I can't right offhand. There was
9 one that was around 12,000.

10 Q. Was that in one of your last years
11 with Ford or was that sometime earlier?

12 A. That was one of the last three years
13 with Ford.

14 Q. Do you recall --

15 A. I think all three of them have been
16 higher than the ones I've received at --

17 Q. Do you recall receiving a bonus from
18 ZF Batavia in the year 2000 of \$11,550?

19 A. What year?

20 Q. 2000, on or about March 10th of 2000.

21 A. When was it received?

22 Q. March 10, 2000. Let me do this. I
23 don't think we need to mark this, but this might
24 help.

1 A. That would be based on the '99 --

2 Q. For the record, I've put in front of
3 the witness Bates stamped document 000116, which is
4 a document produced in this case by plaintiffs. It
5 appears to reflect that you received an \$11,550
6 bonus.

7 A. Okay.

8 Q. You don't have any reason to dispute
9 that, do you, Mr. DeVito?

10 A. No.

11 Q. Okay.

12 A. The only -- the only reason I
13 questioned it at all is because -- the time that it
14 was received because it was for the year 2000, I
15 could understand that. If it's for -- to
16 compensate me for the one month in '99 that was
17 left that wasn't covered by Ford, then that would
18 be a different story. That would be the one I
19 received --

20 Q. Okay.

21 A. -- in March of that year.

22 MR. VANWAY: Mr. DeVito, I may have a
23 follow-up question or two when I review my notes.
24 But for right now, I think I'll see if Mr. Hunter

1 has got anything further, so we can maybe speed
2 this process up a little bit.

3 EXAMINATION

4 BY MR. HUNTER:

5 Q. Mr. DeVito, just a couple of follow-up
6 questions. Mr. VanWay had indicated or asked a
7 question about some things that can't change, in
8 terms of your employment terms. And you made a
9 comment that some of them were linked with Ford. I
10 think it was something along those lines. Do you
11 remember that comment?

12 A. I don't. I don't recall exactly what
13 it was in reference to. I mean, if I know what the
14 question was, I might.

15 Q. Let me try it this way. In terms of
16 your current employment terms with Batavia, are
17 there certain things that you believed are directly
18 linked to what Ford does, in terms of compensation
19 or benefits?

20 A. I guess based on what I was told in
21 the meetings, as well as the -- the other group
22 that was there. I thought things like vacation,
23 the -- the bereavement, the holidays, various types
24 of leaves would be linked with what Ford did, yes.

1 Q. So if Ford changed those policies, you
2 would expect those to automatically change, then,
3 at Batavia?

4 A. Yes, I -- I guess I did.

5 Q. What about your --

6 A. The other thing is the overtime rate,
7 I -- based on the statements that were made, I
8 thought that that would keep pace with not only
9 what Ford did, but since hourly -- Ford hourly
10 employees work at our plant, I thought it would
11 keep pace. As a supervisor, I didn't think I would
12 make less than the people working for me on
13 overtime, but I do.

14 Q. Did you feel your salary was somehow
15 linked to Ford?

16 A. Not my -- not my base salary, no.

17 Q. What about the merit increases?

18 A. Do I think they were linked to Ford?

19 Q. Mm-hmm.

20 A. From the standpoint of Ford being the
21 only customer and then paying everybody's wages
22 there by purchasing transmissions, yes, I did think
23 that there was.

24 Q. What about the AIP payment?

1 A. Well, once again, if -- if -- when
2 Ford was paying the cost plus, that was when we got
3 the -- the maximum that was ever paid on the AIP,
4 or I did, I should say. I don't know what
5 everybody else got.

6 Q. Well, I don't understand how -- Ford
7 doesn't have an AIP payment, do they?

8 A. No, but they contribute to whether we
9 are successful on our goals or not. It's like
10 reducing the schedule at their plant impacts
11 whether we made schedule or not. They also are our
12 only customer for service components, which is
13 another measurable.

14 The ones they don't control are health
15 and safety-related issues, that we have certain
16 criteria we have to meet. But we do compete within
17 the Ford system to be in the -- to be their
18 hierarchy system, as far as where the Ford -- where
19 the plant rates on deliverables and safety.

20 So we compete with the other
21 transmission plants. We compete with everybody in
22 the division that we sell components from.

23 Q. When you talk about cost plus, is it
24 your understanding that CVT is a cost plus program?

1 A. If they are, I don't know about CVT.

2 It's the --

3 Q. And you under --

4 A. -- U204 that goes in the Escape was
5 the one that was put on cost plus.

6 Q. Okay. You understood CVT was the
7 future production at Batavia, correct?

8 A. Yes.

9 Q. And you understood even at the time of
10 the joint venture, the CD4E, U204 was scheduled to
11 go out of service in a relatively short term,
12 correct?

13 A. 2005 or six is when they -- when they
14 kept quoting back then, yes.

15 Q. So cost plus would not have had
16 anything to do with merit or salary or anything
17 else, once the plant jumped over to CVT, correct?

18 A. Repeat that.

19 Q. Since CVT is not a cost plus program,
20 you understood that Batavia would essentially have
21 to stand on its own with respect to CVT and pricing
22 and the economics, correct?

23 A. At some point in time, yes. They're
24 not there yet, though.

1 Q. And so the company, Batavia, would
2 have to stand on its own and that your pay would
3 not be related to Ford because of the cost plus
4 pricing?

5 A. At some point in time when Ford's not
6 their only customer, yeah, I would think that Ford
7 wouldn't have any impact.

8 Q. All right. And so what happened at
9 that point in time, in terms of Batavia's ability
10 to make changes to its compensation structure?

11 A. I didn't understand the question.

12 Q. Once the CD4E went out of production,
13 would it be your testimony that all of these things
14 would be subject to change at that point in time?

15 A. I don't know that. That's a
16 prediction for the future.

17 Q. But certainly at the time you signed
18 on, the anticipation was that CD4E would go out of
19 production and that the plant would be producing
20 only CVTs?

21 A. At some point in time, yes, that's the
22 plan. Who the customers might be, the only one
23 that was in line or committed to and still hasn't
24 signed on the dotted line was Ford Motor Company.

1 So they -- they do play -- play an integral part in
2 what happens there. If you don't have a customer,
3 you don't have to make a transmission.

4 Q. Doesn't -- you also sell to Mazda, do
5 you not?

6 A. It's also Ford.

7 Q. Part of it is, correct?

8 A. The part we sell to is.

9 Q. Okay.

10 A. It's ran by Ford managers.

11 MR. HUNTER: I don't think I have
12 anything further.

13 MR. VANWAY: True to my word,
14 Mr. DeVito, I do have a few more.

15 THE WITNESS: I didn't hear what you
16 said.

17 MR. VANWAY: I have just a few more.

18 THE WITNESS: Oh, okay.

19 MR. VANWAY: I'll be quick. I'll try
20 to be quick.

21 EXAMINATION

22 BY MR. VANWAY:

23 Q. With respect to the different people
24 that you've testified about, Hassan and the others,

1 I won't name them all, but the people that you had
2 conversations with about coming over to ZF Batavia,
3 did you have any reason to believe that those folks
4 weren't telling you the truth at the time they made
5 those communications to you?

6 A. No.

7 Q. Did you at that time have any reason
8 to believe that -- that they knew that, down the
9 road, after ZF Batavia got up and running, after
10 you went to work there, that ZF Batavia was going
11 to make changes in its benefits or in its policies?

12 A. I think at least part of -- parts of
13 some of the things they said they knew were going
14 to change based on comments that Hassan has made.

15 Q. Okay. And at the time they were
16 making it, did you believe that things were going
17 to change?

18 A. I'm sorry?

19 Q. At the time that they made these
20 comments to you, did you believe that things were
21 going to change?

22 A. Yeah, I bought it hook, line and
23 sinker.

24 Q. So you didn't believe things were

1 going to change?

2 A. I -- at the time, no, I didn't.

3 Q. Okay. Well, what makes you think now
4 that some of these individuals knew that things
5 were going to change?

6 A. Well, Hassan, for one, has flat out
7 said that he's been privy to information from Ford
8 people and ZF executives, that they knew it right
9 out of the gate.

10 Q. What information is that, do you know?

11 A. He has stated that he has documents
12 that -- from Rick Behr. He used to be the general
13 manager of the division.

14 Q. Have you seen these documents?

15 A. I'm sorry?

16 Q. Have you seen those documents --

17 A. No, I haven't.

18 Q. -- that Hassan --

19 A. I just -- I was there when he was
20 talking with someone else about it.

21 Q. Do you know what -- what changes
22 Hassan was referring to?

23 A. No, I -- I don't know all of them. I
24 know that the ability for people to go to the

1 Sharonville plant was not a true statement when
2 they made that. It was an added inducement to get
3 people to sign on that didn't want to relocate.
4 There were -- there was some people that were told
5 that ZF wasn't interested in them and that
6 Sharonville didn't have openings and if they didn't
7 want to relocate, they would be laid off with --
8 within six months and there were at least six
9 people that were put in that category that went to
10 Sharonville.

11 Q. Okay. Any other changes that Hassan
12 referenced?

13 A. That's the only ones I remember at
14 all.

15 Q. You had an offer to go to Sharonville,
16 right?

17 A. Yes.

18 Q. And you declined it?

19 A. Yes, but up till -- up till the change
20 in management happened over there, I was -- I was
21 not eligible to go there. My opportunities were
22 going to be Detroit, Cleveland, Atlanta.

23 Q. I think you testified that it was your
24 belief that things such as merit increases, for

1 example, are impacted by the fact that Ford is ZF
2 Batavia's customer. Did I understand that right?

3 A. Yeah.

4 Q. Okay. If, for example, Chrysler
5 started buying transmissions from ZF Batavia, then
6 I assume they would impact merit increases in the
7 same way that you believe Ford does, by virtue of
8 them being a customer?

9 A. Yeah.

10 Q. And the CVT opportunities, you
11 expected those to materialize in the future at some
12 point after you went to ZF Batavia, right?

13 A. Yes.

14 Q. And you didn't expect to walk in the
15 door on day one, be working in CVT, did you?

16 A. No.

17 Q. That was some future opportunity that
18 you thought would come about?

19 A. Yes.

20 Q. And with respect to your profit
21 sharing, I know you testified that you thought your
22 last few years at Ford were larger than at ZF
23 Batavia. I've got documents, Mr. DeVito, that
24 appear to show that in 1996, for example, your

1 profit sharing at Ford was a little over \$3,100;
2 1997, it was about \$2,982; 1998, \$7,700. Do those
3 numbers sound accurate to you?

4 A. Is that the gross on it?

5 Q. I'm sorry?

6 A. Is that the gross for them?

7 Q. Right, correct, before taxes.

8 A. I think so.

9 Q. Okay.

10 A. What was the first year?

11 Q. The first year was 1996 at \$3,118.

12 That sound right to you?

13 A. I don't really recall. I was just
14 interested in finding out what it was.

15 MR. VANWAY: Okay. I don't think I
16 have anything further, Mr. DeVito. Thank you.

17 MR. HUNTER: I think we're done.

18 MR. SIMON: Well, just let me -- can I
19 kick you out of here real quick, and then I might
20 have a question or two? Off the record.

21 (Deposition concluded at 5:19 p.m.)

22

23

William DeVito

24

1 C E R T I F I C A T E

2

3 STATE OF OHIO :

4 : SS

5 COUNTY OF HAMILTON :

6

7 I, Susan M. Barhorst, a Notary Public in
8 and for the State of Ohio, duly commissioned and
9 qualified, do hereby certify that prior to the
10 giving of this deposition the within-named WILLIAM
11 DEVITO was by me first duly sworn to testify the
12 truth, the whole truth, and nothing but the truth;
13 that the foregoing pages constitute a true,
14 correct, and complete transcript of the testimony
15 of said deponent, which was recorded in stenotypy
16 by me, and on the day of October 2003 was
17 submitted to counsel for deponent's signature.

18 I further certify the within deposition was
19 duly taken before me at the time and place stated,
20 pursuant to the Federal Rules of Civil Procedure;
21 that I am not counsel, attorney, relative or
22 employee of any of the parties hereto, or their
23 counsel, or financially or in any way interested in
24 the within action, and that I was at the time of

1 taking said deposition a Notary Public in and for
2 the State of Ohio.

3 IN WITNESS WHEREOF, I have hereunto set my
4 hand and notarial seal at Cincinnati, Ohio, this
5 day of October 2003.

6

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Susan M. Barhorst, Notary Public
in and for the State of Ohio.
My commission expires
February 18, 2004

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